

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
**DIVISION OF WATER RIGHTS  
ORDER**

Application 26678

Permit 19497

**ORDER APPROVING A NEW DEVELOPMENT SCHEDULE AND MODIFYING  
CONDITION 13 OF PERMIT 19497**

**WHEREAS:**

1. Permit 19497 was issued to Quintana Minerals Corporation on June 12, 1985 pursuant to Application 26678.
2. Permit 19497 was subsequently assigned to Blue Range Mining Company who then sold it to the current owner, Project Darwin, Inc.
3. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board (SWRCB).
4. The permittee and affected parties have entered into an agreement dated June 2, 1997. The parties have requested that the agreement amend Condition 13(2), 13(3), 13(4), and 13(5) of Permit 19497. The agreement is intended to protect the desert riparian environments and will control pumping levels and establish an interim groundwater monitoring program which will include undertaking of hydrological and biological studies to determine the most suitable conditions necessary to protect the springs, streams, and faunal and botanical concerns in this area. The affected parties, which are part of this agreement, include the National Park Service, Bureau of Land Management, and California department of Fish and Game. The agreement should amend Condition 13 of Permit 19497 as requested.

**NOW, THEREFORE, IT IS ORDERED THAT:**


1. Condition 7 of the permit be amended to read:  
  
Complete application of the water to the authorized use shall be made by December 31, 2007. (0000009)
2. Condition 13 is hereby amended with Paragraphs (1) and (6) of Permit Condition 13 to remain in effect as follows:

- (1) The quantity of water diverted under this Permit, together with that diverted under License 4715 issued pursuant to Application 2359 shall not exceed 0.32 cubic feet per second.
- (6) The State Water Resources Control Board reserves jurisdiction over this License to modify conditions relative to the biological and hydrologic monitoring studies or for the protection of fish and wildlife resources. Absent an agreement between the licensee, Department of Fish and Game, and Bureau of Land Management, action by the Board will be taken only after notice to interested parties and opportunity for hearing.

This permit shall be subject to "AGREEMENT Between PROJECT DARWIN, INC. and THE NATIONAL PARK SERVICE and THE BUREAU OF LAND MANAGEMENT and THE CALIFORNIA DEPARTMENT OF FISH AND GAME Regarding GROUNDWATER WITHDRAWALS FROM DARWIN WASH", dated June 2, 1997, on file with the with the State Water Resources Control Board, as to matters which are within jurisdiction of the Board. (0000500)

Dated:

APRIL 1 1998

  
Edward C. Linton, Chief  
Division of Water Rights

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
**DIVISION OF WATER RIGHTS**

**ORDER**

APPLICATION 26678 PERMIT 19497 LICENSE \_\_\_\_\_

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE

**WHEREAS:**

1. Permit 19497 was issued to Quintana Minerals Corporation on June 12, 1985 pursuant to Application 26678.
2. Permit 19497 was subsequently assigned to Blue Range Mining Company, L.P.
3. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board (Board).
4. The permittee has proceeded with diligence and good cause has been shown for said extension of time.

**NOW, THEREFORE, IT IS ORDERED THAT:**

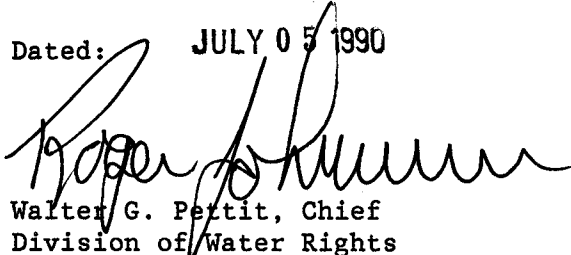
1. Condition 7 of the permit be amended to read:

COMPLETE APPLICATION OF THE  
WATER TO THE PROPOSED USE  
SHALL BE MADE ON OR BEFORE

December 31, 1994

(0000009)

Dated: JULY 05 1990

for   
Walter G. Pettit, Chief  
Division of Water Rights

STATE OF CALIFORNIA  
~~THE RESOURCES AGENCY~~  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 19497

Application 26678 of Quintana Minerals Corporation (over)  
601 Jefferson Street, 40th Floor, Houston, Texas 77002

filed on December 29, 1980, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

Darwin Wash Underflow

Panamint Valley

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
North 46°52'23" East, 3,878.04 feet from SW corner Section 16	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	16	19S	41E	MD

County of Inyo

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Domestic						
Mining	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	13	19S	40E	MD	
	S $\frac{1}{2}$ of SW $\frac{1}{4}$	13	19S	40E	MD	
	SE $\frac{1}{2}$ of SE $\frac{1}{4}$	14	19S	40E	MD	
	E $\frac{1}{2}$ of NE $\frac{1}{4}$	23	19S	40E	MD	
	NW $\frac{1}{4}$	24	19S	40E	MD	

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.32 cubic foot per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 231.7 acre-feet per year.

(0000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Complete application of the water to the authorized use shall be made by December 1, 1989.

(0000009)

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

(0000010)

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

10. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation. The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

12. Permittee shall comply with the following provision which is derived from the agreement between permittee and Marvin J. Vose, Bette N. Vose and Lisa B. Vose executed on February 2, 1982, and filed with the State Water Resources Control Board:

Permittee shall compensate the Voses for subordinating their water rights to this permit.

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

13. For the protection of fish and wildlife, permittee shall comply with the following provisions which are derived in part from the proposed agreement dated January 27, 1982 between permittee and the California Department of Fish and Game and the United States Bureau of Land Management: (0000024)

- (1) The quantity of water diverted under this permit, together with that diverted under License 4715 issued pursuant to Application 2359 shall not exceed 0.32 cubic foot per second.
- (2) Permittee shall, at its own expense, conduct biological and hydrologic monitoring studies, as specified in the proposed agreement or as otherwise approved by the Department of Fish and Game and the State Water Resources Control Board, to determine the effects of its diversion on the Darwin Falls ecosystem and flow regime.
- (3) During the time that the biological and hydrologic studies are being conducted and until a permanent low flow criteria is established and approved by the State Water Resources Control Board, permittee in diverting water under this permit, shall abide by the following criteria:
  - (a) Diversion shall be suspended based on the historic 7, 14, 21, and 28 day lowest mean daily flows for each month recorded from the USGS gaging station on Darwin Creek during the period 1969-1981, each such period beginning on the first day of the month (Table 1 of the proposed agreement).
  - (b) Diversion shall be curtailed for at least seven days whenever the stream flow exhibits a 7, 14, or 21 day mean which is less than the 7, 14, or 21 day historic low flow for that month.
  - (c) If diversion is curtailed based on the seven day low flow, it may be resumed in another seven days only if the actual stream flow of the two seven-day periods exceeds the 14 day historic low flow for that month.
  - (d) If curtailment of diversion is either initiated or continued based on a 14 day low flow, it may be resumed in another seven days if the actual stream flow of the 14 and seven-day periods combine to exceed the 21 day historic low flow for that month.
  - (e) If curtailment of diversion is either initiated or continued based on a 21 day low flow, it may be resumed in another seven days if the actual stream flow of the 21 and 7-day periods combine to exceed the 28 day historic low flow for that month.
  - (f) In any case, diversion may resume on the first of the month.
  - (g) The requirements in subparagraphs (a) through (f) above shall be carried out as follows: On the 7th day of each month, the average flow for the previous 7 days is computed and compared with the lowest historical flow for the first 7 days of the same month. If the actual average is less than the historical average, diversion must cease for days 8 through 14. On day 15, the first 14 days of actual flow are averaged and compared with the lowest historical flow for the first 14 days of the same month. If the actual average is less

than the historical average, diversion must cease for days 15 through 21. On day 22, the first 21 days of actual flow are averaged and compared with the lowest historical flow for the first 21 days of the same month. If the actual average is less than the historical average, diversion must cease for days 22 through 28. On day 29, the first 28 days of actual flow are averaged and compared with the lowest historical flow for the first 28 days of the same month. If the actual average is less than the historical average, diversion must cease for day 29 through the last day of the month. The process starts anew on the first day of the succeeding month. Diversion is always authorized during the first 7 days of every month.

- (4) Permittee shall submit monthly reports showing the results of the biological and hydrologic monitoring studies to the State Water Resources Control Board as soon as practicable following the month during which the monitoring was accomplished.
- (5) Permittee shall prepare and submit to the State Water Resources Control Board an annual report summarizing water diversion and the hydrologic conditions of Darwin Wash and Darwin Falls.
- (6) The State Water Resources Control Board reserves jurisdiction over this permit to modify conditions relative to the biological and hydrologic monitoring studies or for the protection of fish and wildlife resources. Absent an agreement between the permittee, Department of Fish and Game, and Bureau of Land Management, action by the Board will be taken only after notice to interested parties and opportunity for hearing. (0000500)
14. Water may be diverted under this permit only during such times that all waste discharge requirements prescribed by the California Regional Water Quality Control Board, Lahontan Region, or by the State Water Resources Control Board are being complied with. (0360500)
15. If any items of cultural, historical, or archeological value are discovered during construction or operation of the project, the Chief of the Division of Water Rights shall be notified and activities shall be halted until appropriate mitigation measures can be determined. (0380500)
16. No water shall be used under this permit until all necessary federal, state, and local approvals have been obtained. (000J001)

**This permit is issued and permittee takes it subject to the following provisions of the Water Code:**

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every proprietor of water to whom a permit is issued takes it subject to the conditions therein expressed and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: JUNE 12 1985

STATE WATER RESOURCES CONTROL BOARD

4-17-84 asgd to Blue Range Mining Company, L.P.

Raymond Wash

Chief, Division of Water Rights